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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

File: SRC 02 219 50217

Office: TEXAS SERVICE CENTER

Date: FEB 13 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:

identifying information
prevented from being released
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a university. The beneficiary is an orthodontist. The petitioner seeks classification of the beneficiary, under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in medical science. The petitioner seeks to employ the beneficiary temporarily in the United States for a period of three years as an assistant professor of orthodontics at an annual salary of \$72,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has sustained recognition as being one among a small percentage at the very top of his field pursuant to 8 C.F.R. § 214.2(o)(3)(ii) or that he has had the requisite "sustained acclaim" in the field of medical science required by the statute.

On appeal, counsel for the petitioner submits a brief arguing that the record shows that the beneficiary is an alien with extraordinary ability in his field.

The record consists of a petition with supporting documentation, a request for additional documentation and the petitioner's reply, the director's decision, an appeal, brief, and additional documentation.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The issue raised by the director in this proceeding is whether the petitioner has shown that the beneficiary qualifies for classification as an alien with extraordinary ability in medical science as defined by the statute and the regulations.

8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part, that:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business,

or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other

remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary in this matter is a citizen and native of India. The record reflects that he received a bachelor degree in dental surgery in May 1994 and subsequently completed a one-year internship from July 1994 through June 1995 in his native country. Between July 1995 and June 1998, he obtained a Master of Dental Surgery degree and completed a residency in orthodontics at the Oral Health Sciences Center, Postgraduate Institute of Medical Education and Research, Chandigarh, India. He completed two fellowships in craniofacial orthodontic treatment at the University of North Carolina and at the University of Toronto, Canada. The beneficiary has been most recently employed as an assistant professor at the Department of Orthodontics at the BRS Dental College and Hospital in Panchkula, India and a consultant for the Fortis Multispecialty Medical Center in Mohali, India.

After reviewing the evidence submitted in support of the petition, the director found the beneficiary ineligible for O-1 classification based on finding the sum of the evidence insufficient to demonstrate that he is "at the very top" of his field pursuant to 8 C.F.R. § 214.2(o)(3)(ii) or that he has had the requisite "sustained acclaim" in his field as required by the statute.

On appeal, counsel for the petitioner asserts that the director abused her discretion in weighing the evidence and finding the beneficiary ineligible for an O-1 classification.

There is no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Neither is the record persuasive in demonstrating that the beneficiary has met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

For criterion number one, the petitioner states that the beneficiary received numerous academic awards. Upon graduation, the beneficiary was awarded "best graduate of the year" by his dental college on account of his academic performance. He was awarded the "International College of Dentists Award." In 1997, he received second place in the student category for a paper he presented at the World Congress on Orthodontics in New Delhi, India. In 1998 he was awarded the "Kataria Memorial Gold Medal," which is given to the best postgraduate student at the Post Graduate Institute of Medical Education and Research in Chandigarh, India. In review, none of these academic awards satisfy this criterion. This visa classification is not based on an alien's performance during preparatory specialized training, but rather hinges on the alien's level of acclaim and recognition in the actual field. Academic awards received while preparing for the vocation fall substantially short of constituting a national or international prize or award for recognition in the field.

Counsel for the petitioner argues that the American Society of Association Executives' Gold Circle Award for best Scientific Article for 2001 satisfies this criterion. Although the petitioner may have established that this award has national recognition, he has failed to establish that this award is one for excellence in the field of endeavor (i.e. medical science). According to the record, competition for this award came from various dental, medical and non-medical professional associations. In any event, this one award is insufficient evidence of sustained acclaim. The beneficiary does not satisfy this criterion.

For criterion number two, while the beneficiary is a member of the World Federation of Orthodontists, the American Cleft Palate and Craniofacial Association and the Indian Orthodontic Society, there is no evidence that these are associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines.

For criterion number three, the petitioner submitted copies of three articles about the beneficiary and his work that were published in *The Tribune*¹ and one article published by the American Association of Orthodontists that mentions the beneficiary's receipt of the Gold Circle Award. The director determined that these articles did not report anything of great significance regarding the beneficiary. Counsel for the petitioner argues that there is no requirement that the articles be of great significance. The evidence submitted in each category must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise. 8 C.F.R.

¹ Published in Chandigarh, *The Tribune* is distributed in the states of Punjab, Haryana, Himachal Pradesh, Jammu & Kashmir, Chandigarh, parts of Uttar Pradesh and Rajasthan and in the city of Delhi.

§ 214.2(o)(3)(iii). The beneficiary has not satisfied this criterion.

For criterion number four, no evidence was submitted.

For criterion number five, while the beneficiary has published results of his research, the record does not show that his research is considered of "major significance" in the field. By definition, all professional research must be original and significant in order to warrant publication in a professional journal. The record does not show that the beneficiary's research is of major significance in relation to other similar work being performed. The petitioner provided the Service with several testimonials about the value of the beneficiary's work. One wrote that the beneficiary "has done pioneering work to improve the lives of children who are born with cleft lip and cleft palate." Another wrote that one of the beneficiary's articles "provides a road map for orthodontic treatment of children affected by challenging ... disorders." None of the evidence submitted indicates that research performed by the beneficiary has been widely utilized by others in the field. In review, the record does not show that the beneficiary's work is of major significance in relation to other similar work being performed.

For criterion number six, the beneficiary has published articles and given presentations on his research. The director determined that what the beneficiary has done is not different from other doctors or researchers, as it is common for doctors to write and publish material and present it at different functions. Counsel for the petitioner argues that there is no requirement that the articles have to set the beneficiary apart from his peers and that furthermore, the fact that the beneficiary received an award for one article is evidence that he satisfies this criterion. Counsel's arguments are not persuasive. The regulation set forth at 8 C.F.R. § 214.2(o)(3)(iii) must be read in its entirety. The evidence submitted must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise. The beneficiary has not submitted a citation history of the beneficiary's articles or established that the articles have influenced the field. The beneficiary has not satisfied this criterion.

For criterion number seven, the petitioner asserts that the beneficiary will be employed in a critical capacity if the petition is approved and he takes the proffered position. This criterion requires "evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation." 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The beneficiary does not satisfy this criterion.

For criterion number eight, the director determined that the beneficiary satisfies this criterion on the basis that the petitioner has offered to pay the beneficiary an annual salary of \$72,000. The petitioner provided the Service with a one-page printout from the Department of Labor's Online Wage Library. The evidence is inadequate to satisfy this criterion. The petitioner provided salary survey information on postsecondary teachers in health specialties, including veterinary medicine, dentistry, pharmacy, therapy, laboratory technology and public health. The category is overly broad. This portion of the director's decision shall be withdrawn.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for extraordinary ability, the statute requires evidence of "sustained national or international acclaim" and evidence that the alien's achievements have been recognized in the field of endeavor through "extensive documentation." The petitioner has not established that the beneficiary's abilities have been so recognized.

In order to establish eligibility for O-1 classification, the petitioner also must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). In order to meet these criteria in the field of science, the alien must normally be shown to have a significant history of scholarly publications, have held senior positions at prestigious institutions, or hold regular seats on editorial boards of major publications in the field. The beneficiary's achievements have not yet risen to this level.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.